

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

KEVIN D. BROWN
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-442
Case No. 84-12256

S.S.A. No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

The Department appealed from that portion of the decision of the administrative law judge which held that the claimant was not liable to pay a penalty assessment of \$45.60 on an overpayment of Federal Supplemental Compensation benefits under section 1375.1 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant established a claim for Federal Supplemental Compensation (FSC) benefits effective August 5, 1984. When claiming benefits for the two weeks ending August 18, 1984, the claimant reported that he was able to work each workday of the reporting period. He was paid \$152 in FSC benefits for the two weeks ending August 18, 1984. Subsequently, the Department discovered that the claimant underwent surgery on July 9 and remained physically unable to return to work until August 20, 1984.

On September 6, 1984, the Department notified the claimant that he was disqualified for benefits under section 1257(a) of the Unemployment Insurance Code (hereinafter "the code") because he made false statements concerning his ability to work during the two weeks ending August 18, 1984. The Department also assessed an FSC overpayment of \$152 and a 30 percent penalty of \$45.60 pursuant to sections 1375 and 1375.1 of the code.

The claimant filed a timely appeal from the Department's determination and notice of overpayment. A hearing was held before an administrative law judge on October 17, 1984. The administrative law judge held the claimant was ineligible for benefits under section 1253(c), disqualified for benefits under section 1257(a) of the code, and liable for repayment of the \$152 FSC overpayment under section 3304, subsection 606(a)(2)(A) of the Federal Supplemental Compensation Act of 1982, as amended. The administrative law judge held, however, that the claimant was not subject to a 30 percent penalty assessment under section 1375.1 of the code because the Federal Supplemental Compensation Act of 1982, as amended, does not authorize penalty assessments on overpayments of FSC benefits. The Department appealed from that portion of the decision of the administrative law judge which held that the claimant was not liable to pay a penalty assessment under section 1375.1 of the code.

REASONS FOR DECISION

The Federal Supplemental Compensation Act of 1982 (Title VI of P.L. 97-248), as amended by the Federal Supplemental Compensation amendments of 1983 (Title I of P.L. 98-135), provides for the payment of federal supplemental compensation to individuals who have exhausted their right to regular compensation under state law and are not entitled to be paid regular, extended, additional, or any other unemployment compensation under state or federal law (26 USC section 3304, subsection 602(b)(1)).

Section 602(d) of that act (26 USC 3304) provides that the state law governing extended unemployment insurance claims shall apply to claims of FSC. Section 3304(a)(11) of Title 26 US Code and section 4001 of the Unemployment Insurance Code provide in turn that, with certain exceptions not relevant here, state rules governing regular unemployment compensation shall apply to claims of extended unemployment compensation. Thus, generally the provisions concerning regular unemployment compensation apply to FSC.

Section 1375.1 of the Unemployment Insurance Code, relating to overpayments of regular unemployment compensation, provides as follows:

"If the director finds that an individual has been overpaid unemployment compensation benefits because he

or she willfully, for the purpose of obtaining unemployment compensation benefits, either made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact, the director shall assess against the individual an amount equal to 30 percent of the overpayment amount. Assessments collected under this section shall be deposited in the Benefit Audit Fund."

Accordingly, an individual who receives unemployment compensation as a result of a false statement or representation is subject to an additional penalty. Not only must the claimant repay the overpayment, but he or she is also assessed an amount measured by the size of the benefits overpaid him or her.

There is no provision in the Federal Supplemental Compensation Act specifically dealing with penalties. However, there is no provision prohibiting the imposition of a penalty. The federal and state provisions envision treating claimants alike, irrespective of which unemployment compensation program funds their benefits. Congress has clearly indicated when special rules shall apply to extended or supplemental compensation claimants. For instance, section 202(a)(5) of the Federal-State-Extended Unemployment Compensation Act, as amended, imposes a separate earnings requirement; section 202(a)(3) defines suitable work to include any work which is within the claimant's capabilities; and section 202(a)(3)E(2) requires the individual to provide tangible evidence that he or she has engaged in a systematic and sustained work search.

Section 615.8, Title 20, Code of Federal Regulations, concerning federal supplemental compensation, specifically provides that the state provisions regarding disqualifications for making a false statement or representation to obtain regular unemployment compensation shall apply to FSC. Section 1375.1 is akin to the disqualification imposed under section 1257(a) for fraudulently receiving benefits. There being no clear federal prohibition, these penalties shall apply to the fraudulent receipt of Federal Supplemental Compensation, as well as other unemployment compensation benefits.

DECISION

The appealed portion of the decision of the administrative law judge is reversed. The claimant is liable to pay the \$45.60 penalty assessment.

Sacramento, California, September 5, 1985.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT L. HARVEY, Chairman

JAMES J. HAGARTY

HERBERT RHODES

LORETTA A. WALKER

CHET WRAY

J. RICHARD GLADE

DEBRA A. BERG